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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,249	09/09/2003	Kim R. Rogers	ROGERS1	.4045

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EXAMINER

NAFF, DAVID M

ART UNIT PAPER NUMBER

1651

DATE MAILED: 06/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/657,249

Applicant(s)

ROGERS ET AL.

Examiner

David M. Naff

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 2-6 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 7-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 9/9/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

A response of 4/5/06 to a restriction requirement of 3/6/06 elected claims 1 and 7-10 of Group I with traverse on the ground that searching and examining the claims of Groups I and II together will not be a serious burden. However, due the claims of invention II having a specific use for which the detector of the Group I claims does not have to be used, a serious burden will result from examining the claims of both groups together. The restriction requirement is still considered proper, and is adhered to and made final.

Claims 2-6 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 4/5/06.

Claims examined on the merits are 1 and 7-10.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 7-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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In line 4 of claim 1, line 7 of claim 7, line 2 of claims 8 and 9, and line 3 of claim 10, there is not clear antecedent basis for "enzyme".

Claim 10 is unclear how the package being opened after exposure further defines the detector claimed. Opening the package occurs in a process of use.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Kok et al (J. Biomater. Sci. Polymer Edn, Vol 12, No. 11, pp. 1161-1176 (2001)).

The claim is drawn to a detector containing acetylcholinesterase immobilized in a sol-gel or membrane.

Kok et al disclose acetylcholinesterase immobilized in a membrane for use as a biosensor.

The acetylcholinesterase immobilized in a membrane disclosed by Kok et al is a detector that is the same as presently claimed. The acetylcholinesterase of Kok et al will inherently be inhibited by organophosphorus or carbamate compounds.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 7, 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kok et al in view of Strobel et al (5,766,473).

The claims require the detector of claim 1 to be packages such as in a semipermeable polyethylene bag such that when a test is conducted the enzyme is exposed to ambient conditions.

Koke et al is described above.

Strobel et al disclose storing enzyme-loaded membranes in a polyethylene bag (col 33, lines 43-45).

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It would have been obvious to store the membrane containing acetylcholinesterase disclosed by Kok et al in a polyethylene bag as suggested by Strobel et al storing an enzyme-containing membrane in a polyethylene bag. The polyethylene bag is inherently semipermeable and capable of being opened as in claim 10.

Claim Rejections - 35 USC § 103

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 7, 9 and 10 above, and further in view of Stanford et al (7,008,524 B2).

The claim requires the enzyme to be immobilized in a sol-gel.

Stanford et al disclose acetylcholinesterase immobilized in a sol-gel. For example, see claim 9.

It would have been obvious to substitute for the membrane of Kok et al a sol-gel as suggested by Stanford et al for immobilizing acetylcholinesterase.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Stanford et al.

Acetylcholinesterase immobilized in a sol-gel as disclosed by Stanford et al is a detector the same as presently claimed.

Claim Rejections - 35 USC § 103

Claims 7, 8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stanford et al in view of Strobel et al.

It would have been obvious to store the sol-gel immobilized acetylcholinesterase of Stanford et al in a polyethylene bag as suggested by Strobel et al.

Claim Rejections - 35 USC § 103

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 7, 8 and 10 above, and further in view of Kok et al.

It would have been obvious to substitute for the sol-gel used by Stanford et al to immobilize acetylcholinesterase, the membrane used by Kok et al to immobilize acetylcholinesterase.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David M. Naff whose telephone number is 571-272-0920. The examiner can normally be reached on Monday-Friday 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn can be reached on 571-272-

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0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David M. Naff
Primary Examiner
Art Unit 1651

DMN
6/12/06